

AMENDED IN ASSEMBLY JANUARY 5, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 871**

**Introduced by Assembly Member Wayne**

February 27, 1997

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An act to amend Section 53321.5 of the Government Code, and to amend Sections ~~33459.3 and 33459.7~~ of 25220, 25301, 25355, 33459.1, 33459.3, and 33459.4 of, and to repeal Sections 33459.2 and 33459.7 of, the Health and Safety Code, relating to ~~redevelopment~~ hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 871, as amended, Wayne. Redevelopment: hazardous substances cleanup: *removal and remedial actions*.

*(1) Existing law requires the Department of Toxic Substances Control to notify the planning and building department of each city, county, or regional council of certain land use restrictions imposed upon property designated as hazardous waste property or border zone property or sites listed for remedial or removal action and requires the planning department to file those restrictions and take specified actions.*

*This bill would additionally include certain remedial action land use controls within those notification requirements, thereby creating a state-mandated local program by imposing new duties upon local governments. The bill would require the department to maintain this list of land use restrictions in a specified manner and to provide the list to local*

governments at least once every 3 months. The bill would require the list to be made available electronically, as specified.

(2) Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, makes a statement of legislative intent, imposes liability for hazardous substance removal or remedial actions, and requires the department to adopt, by regulation, criteria for the selection and for the priority ranking of hazardous substance release sites for removal or remedial actions under the act. The act requires the department, or, if appropriate, the California Regional Water Quality Control Board, to prepare or approve remedial action plans for each listed site. For purposes of the act, 'hazardous substance' is defined as excluding petroleum. The act establishes a rebuttable presumption that certain residential owners are liable under the act, and prohibits the department from bringing an action against such an owner unless the department makes specified certifications.

This bill would make a legislative declaration with regard to the authority of the Director of Toxic Substances Control to enter into a covenant not to sue. The bill would allow any person to voluntarily enter into an enforceable agreement with the department that allows the department to conduct removal or remedial actions at a site with a release of petroleum to be conducted under the oversight of the department.

(3) Existing law authorizes a redevelopment agency, until January 1, 1999, to take any action that the agency determines is necessary, consistent with other state and federal laws, to remedy or remove a release of hazardous substances on, under, or from a project area subject to specified conditions relating to the identity of, notice to, and actions by, the party responsible for the release of hazardous substances. Existing law requires a redevelopment agency to request cleanup guidelines from the Department of Toxic Substances Control and to provide the department and local health and building departments with notification of any cleanup activity pursuant to those provisions at least 30 days before the commencement of the activity. Existing law authorizes an agency to designate a local agency in lieu of the department



*or a regional board to oversee the remediation or removal of hazardous substances from a specific hazardous substance release site in accordance with prescribed procedures and requirements.*

*This bill would delete the January 1, 1999, repeal date specified above, thereby extending the operation of those provisions indefinitely, and would require an agency taking such an action to remove or remedy a release of hazardous substances to do so only on property owned by the agency, a participating owner, or a responsible party.*

*(4) Existing law, operative January 1, 1999, requires a redevelopment agency to obtain the written approval of the department or a California regional water quality control board before removing or remedying hazardous waste from property within a redevelopment project area.*

*The bill would repeal the removal and remedial action provisions which would have become operative January 1, 1999, and would make conforming changes.*

~~Under existing law, a redevelopment agency that undertakes and completes an action to remedy or remove a release of hazardous substances on, under, or from a redevelopment project area, under specified conditions, is not liable for that release under specified provisions of law.~~

~~This bill would extend that immunity to the redevelopment agency where the agency approves an owner-participation agreement requiring that action by the owner-participant.~~

~~Under~~

*(5) Under existing law, the legislative body of a local agency, at the time of the adoption of the resolution of intention to establish a community services district, where a removal or remedial action for the cleanup of any hazardous substance in the proposed district is proposed, is required to prepare, or cause to be prepared, a remedial action plan, based on prescribed factors.*

*This bill would add to those factors or determinations upon which the remedial action plan would be based, the alternative of conditioning the financing of the activity upon the approval of the remedial action plan pursuant to specified provisions of law.*

(6) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 53321.5 of the Government  
2 Code is amended to read:  
3 53321.5. At the time of the adoption of the resolution  
4 of intention to establish a community facilities district,  
5 the legislative body shall direct each of its officers who is  
6 or will be responsible for providing one or more of the  
7 proposed types of public facilities or services to be  
8 financed by the district, if it is established, to study the  
9 proposed district and, at or before the time of the hearing,  
10 file a report with the legislative body containing a brief  
11 description of the public facilities and services by type  
12 which will in his or her opinion be required to adequately  
13 meet the needs of the district and his or her estimate of  
14 the cost of providing those public facilities and services.  
15 If the purchase of completed public facilities or the  
16 payment of incidental expenses is proposed, the  
17 legislative body shall direct its appropriate officer to  
18 estimate the fair and reasonable cost of those facilities or  
19 incidental expenses. If removal or remedial action for the  
20 cleanup of any hazardous substance is proposed, the  
21 legislative body shall (a) direct its responsible officer to  
22 prepare or cause to be prepared, a remedial action plan  
23 based upon factors comparable to those described in  
24 subdivision (c) of Section 25356.1 of the Health and Safety  
25 Code or (b) determine, on the basis of the particular facts  
26 and circumstances, which shall be comparable to those  
27 described in subdivision (g) of Section 25356.1 of the  
28 Health and Safety Code, that the remedial action plan is  
29 not required or (c) condition the financing of the activity

1 upon approval of a remedial action plan pursuant to  
2 ~~Section 25356.1 of Chapter 6.65 (commencing with~~  
3 ~~Section 25260) of Division 20 of the Health and Safety~~  
4 *Section 25356.1 of the Health and Safety Code*. All of those  
5 reports shall be made a part of the record of the hearing  
6 on the resolution of intention to establish the district.

7 SEC. 2. *Section 25220 of the Health and Safety Code*  
8 *is amended to read:*

9 25220. (a) For purposes of this article, unless the  
10 context clearly requires a different meaning:

11 (1) "Determination" means a decision by the  
12 department as to whether land should be designated as  
13 hazardous waste property or border zone property and  
14 which is reached after an analysis and an evaluation of the  
15 information obtained by the department.

16 (2) "Designation" means imposition of the  
17 requirements specified in Section 25230 after a  
18 determination, a public hearing, and a decision by the  
19 director has occurred pursuant to Section 25229.

20 (b) Whenever there is reasonable cause for the  
21 department to believe that any land may be a hazardous  
22 waste property or border zone property, the department  
23 may, by certified mail, request any person who owns,  
24 leases, or occupies the land, or any other person who has  
25 information relating to the land, to provide any or all of  
26 the following information:

27 (1) A description of the present use of the land.

28 (2) The types and volumes of hazardous waste or  
29 extremely hazardous waste contained therein or thereon.

30 (3) The date or dates the hazardous waste or  
31 extremely hazardous waste was deposited into or onto the  
32 land.

33 (4) A map or maps of the property which they own and  
34 which contains or overlies hazardous waste or extremely  
35 hazardous waste, drawn to a scale of not more than 200  
36 feet to the inch, which shows the area or areas where the  
37 hazardous waste or extremely hazardous waste is  
38 contained or was deposited. The provision of a map  
39 pursuant to this subdivision shall not be required if the  
40 respondent to the request asserts in writing that the

1 respondent has no knowledge or insufficient knowledge  
2 of the existence or location of the wastes to comply with  
3 this subdivision.

4 (5) Any other information which relates to the disposal  
5 of hazardous waste on or within 2,000 feet of the property  
6 or the potential for the migration of those wastes.

7 (c) Any person who is requested to provide  
8 information pursuant to subdivision (b) shall submit the  
9 information to the department within 90 calendar days of  
10 receipt of the request.

11 (d) The department shall notify the planning and  
12 building department of each city, county, or regional  
13 council of governments of any recorded land use  
14 restriction imposed pursuant to Section 25202.5, 25222.1,  
15 25229, 25230, ~~or~~ 25355.5, *or* 25398.7 within the jurisdiction  
16 of the local agency. Upon receiving this notification, the  
17 planning and building department shall do both of the  
18 following:

19 (1) File all recorded land use restrictions in the  
20 property files of the city, county, or regional council of  
21 government.

22 (2) Require that any person requesting a land use  
23 which differs from those filed land use restrictions on the  
24 property apply to the department for a variance or a  
25 removal of the land use restrictions pursuant to Section  
26 25233 or 25234.

27 (e) A planning and building department of a city,  
28 county, or regional council of governments may assess a  
29 property owner a reasonable fee to cover the costs of  
30 taking the actions required by subdivision (d). For  
31 purposes of this subdivision, “property owner” does not  
32 include a person who holds evidence of ownership solely  
33 to protect a security interest in the property, unless the  
34 person participates, or has a legal right to participate, in  
35 the management of the property.

36 (f) *The department shall maintain a list of all deed*  
37 *restrictions recorded pursuant to Sections 25202.5,*  
38 *25222.1, 25229, 25355.5, and 25398.7. The list shall, at a*  
39 *minimum, provide the street address of each property*  
40 *and a brief summary of the provisions of the deed*

1 *restrictions. The list shall be updated as new deed*  
2 *restrictions are recorded. The list shall be available to the*  
3 *public upon request. The department shall make the list*  
4 *available electronically and shall provide the list to local*  
5 *governments at least once every three months. This list*  
6 *shall also be incorporated into the list of sites compiled*  
7 *pursuant to Section 65962.5 of the Government Code.*

8 *SEC. 3. Section 25301 of the Health and Safety Code*  
9 *is amended to read:*

10 *25301. (a) In enacting this chapter, it is the intent*  
11 *of the Legislature to do all of the following:*

12 ~~(a)–~~

13 *(1) Establish a program to provide for response*  
14 *authority for releases of hazardous substances, including*  
15 *spills and hazardous waste disposal sites that pose a threat*  
16 *to the public health or the environment.*

17 ~~(b)–~~

18 *(2) Compensate persons, under certain*  
19 *circumstances, for out-of-pocket medical expenses and*  
20 *lost wages or business income resulting from injuries*  
21 *proximately caused by exposure to releases of hazardous*  
22 *substances.*

23 ~~(c)–~~

24 *(3) Make available adequate funds in order to permit*  
25 *the State of California to assure payment of its 10 percent*  
26 *share of the costs mandated pursuant to Section*  
27 *104(c)(3) of the federal act (42 U.S.C. 9604(c)(3)).*

28 *(b) The Legislature finds that under existing law the*  
29 *director has the authority and discretion to enter into*  
30 *settlements with potentially responsible parties,*  
31 *including entering into covenants not to sue under this*  
32 *chapter and the federal act, and, at the director's*  
33 *discretion, to seek the approval of the consent decrees in*  
34 *federal court that provide protection from contribution*  
35 *actions under this chapter, under certain conditions, and*  
36 *under the federal act for prospective purchasers of*  
37 *property who might otherwise become responsible*  
38 *parties upon purchase. This description of existing*  
39 *authority is not intended to, and shall not be construed to,*  
40 *limit any authority that the department may have.*

1     *SEC. 4. Section 25355 of the Health and Safety Code*  
2     *is amended to read:*

3     25355. (a) The Governor shall be responsible for the  
4     coordination of all state response actions for sites  
5     identified in Section 25356 in order to assure the  
6     maximum use of available federal funds.

7     (b) The director may initiate removal or remedial  
8     action pursuant to this chapter unless these actions have  
9     been taken, or are being taken properly and in a timely  
10    fashion, by any responsible party.

11    (c) (1) At least 30 days before initiating removal or  
12    remedial actions, the department shall make a reasonable  
13    effort to notify the persons identified by the department  
14    as potentially responsible parties and shall also publish a  
15    notification of this action in a newspaper of general  
16    circulation pursuant to the method specified in Section  
17    6061 of the Government Code. This subdivision does not  
18    apply to actions taken pursuant to subdivision (b) of  
19    Section 25358.3 or immediate corrective actions taken  
20    pursuant to Section 25354. A responsible party may be  
21    held liable pursuant to this chapter whether or not the  
22    person was given the notice specified in this subdivision.

23    (2) *Notwithstanding any other provision of law, any*  
24    *person may voluntarily enter into an enforceable*  
25    *agreement with the department pursuant to this*  
26    *subdivision that allows removal or remedial actions to be*  
27    *conducted under the oversight of the department at sites*  
28    *with petroleum releases from sources other than*  
29    *underground storage tanks, as defined in Section*  
30    *25299.24. Agreements entered into pursuant to this*  
31    *subdivision shall provide that the party will reimburse the*  
32    *department for all costs incurred including, but not*  
33    *limited to, oversight costs pursuant to the enforceable*  
34    *agreement associated with the performance of the*  
35    *removal or remedial actions and Chapter 6.66*  
36    *(commencing with Section 25269).*

37    (d) The department shall notify the owner of the real  
38    property of the site of a hazardous substance release  
39    within 30 days after listing a site pursuant to Section  
40    25356, and at least 30 days before initiating a removal or



1 remedial action pursuant to this chapter, by sending the  
2 notification by certified mail to the person to whom the  
3 real property is assessed, as shown upon the last equalized  
4 assessment roll of the county, at the address shown on the  
5 assessment roll. The requirements of this subdivision do  
6 not apply to actions taken pursuant to subdivision (b) of  
7 Section 25358.3 or to immediate corrective actions taken  
8 pursuant to Section 25354.

9 *SEC. 5. Section 33459.1 of the Health and Safety Code*  
10 *is amended to read:*

11 33459.1. (a) An agency may take any actions which  
12 the agency determines are necessary and which are  
13 consistent with other state and federal laws to remedy or  
14 remove a release of hazardous substances on, under, or  
15 from property within a project area *that is owned by the*  
16 *agency, a participating owner, or a responsible party,*  
17 subject to the conditions specified in subdivision (b).  
18 Unless an administering agency has been designated  
19 under Section 25262, the agency shall request cleanup  
20 guidelines from the department or the California  
21 regional water control board. The agency shall provide  
22 the department and local health and building  
23 departments, the California regional water control board,  
24 with notification of any cleanup activity pursuant to this  
25 section at least 30 days before the commencement of the  
26 activity. If an action taken by an agency to remedy or  
27 remove a release of a hazardous substance is not  
28 satisfactory to the department or the California regional  
29 water quality control board, the department or the  
30 California regional water quality control board may  
31 require the agency to take, or cause the taking of,  
32 additional action to remedy or remove the release, as  
33 provided by applicable law. If an administering agency  
34 for the site has been designated under Section 25262, any  
35 requirement for additional action may be imposed only  
36 as provided in Sections 25263 and 25265. If methane or  
37 landfill gas is present, the agency shall obtain written  
38 approval from the California Integrated Waste  
39 Management Board prior to taking that action.

(b) Except as provided in subdivision (c), an agency may take the actions specified in subdivision (a) only under one of the following conditions:

(1) There is no responsible party for the release identified by the agency.

(2) The party determined to be responsible for the release by the agency has been notified by the agency or has received adequate notice from the department, a California regional water quality control board, the Environmental Protection Agency, or other governmental agency with relevant authority and has been given 60 days to respond and to propose a remedial action plan, and the responsible party has not agreed within an additional 60 days to implement a plan to remedy or remove the release that has been found by the agency to be consistent, to the maximum extent possible, with the priorities, guidelines, criteria, and regulations contained in the National Contingency Plan and published pursuant to Section 9605 of Title 42 of the United States Code for similar releases, situations, or events.

(3) The party determined to be responsible for the release has entered into the agreement specified in paragraph (2) *or is undertaking action to remedy or remove the release under the oversight of the administering agency*, but the legislative body of the agency subsequently determines that the plan is not being carried out in an appropriate and timely manner by the responsible party.

(c) Subdivision (b) does not apply to either of the following agencies:

(1) An agency taking actions to investigate or conduct feasibility studies concerning a release.

(2) An agency taking the actions specified in subdivision (a) if the agency determines that conditions require immediate action.

(d) An agency may designate a local agency in lieu of the department or the California regional water quality control board to oversee the remediation or removal of hazardous substances from a specific hazardous substance

1 release site in accordance with all of the following  
2 conditions:

3 (1) The local agency may be designated in lieu of the  
4 department or the California regional water quality  
5 control board if the local agency is designated as the  
6 administering agency under Section 25262. In such a case,  
7 the local agency, as the administering agency, shall  
8 conduct the oversight of the remedial action in  
9 accordance with Chapter 6.65 (commencing with Section  
10 25260) and all provisions of that chapter shall apply to the  
11 remedial action.

12 (2) The local agency may be designated in lieu of the  
13 department or the California regional water quality  
14 control board if the site is an underground storage tank  
15 site subject to Chapter 6.7 (commencing with Section  
16 25280) of Division 20, the local agency has been certified  
17 as a certified unified program agency pursuant to Section  
18 25404.1, the State Water Resources Control Board has  
19 entered into an agreement with the local agency for  
20 oversight of those sites pursuant to Section 25297.1, the  
21 local agency determines that the site is within the  
22 guidelines and protocols established in, and pursuant to,  
23 that agreement, and the local agency consents to the  
24 designation.

25 (3) A local agency may not consent to the designation  
26 by an agency unless the local agency determines that it  
27 has adequate staff resources and the requisite technical  
28 expertise and capabilities available to adequately  
29 supervise the remedial action.

30 (4) (A) Where a local agency has been designated  
31 pursuant to paragraph (2), the department or a  
32 California regional water quality control board may  
33 require that a local agency withdraw from the  
34 designation, after providing the agency with adequate  
35 notice, if both of the following conditions are met:

36 (i) The department or a California regional water  
37 quality control board determines that an agency's  
38 designation of a local agency was not consistent with  
39 paragraph (2), or makes one of the findings specified in  
40 subdivision (d) of Section 512.

1 (ii) The department or a California regional water  
2 quality control board determines that it has adequate staff  
3 resources and capabilities available to adequately  
4 supervise the remedial action, and assumes that  
5 responsibility.

6 (B) Nothing in this paragraph prevents a California  
7 regional water quality control board from taking any  
8 action pursuant to Division 7 (commencing with Section  
9 13000) of the Water Code.

10 (5) Where a local agency has been designated  
11 pursuant to paragraph (2), the local agency may, after  
12 providing the agency with adequate notice, withdraw  
13 from its designation after making one of the findings  
14 specified in subdivision (d) of Section 512.

15 ~~(e) This section shall remain in effect only until~~  
16 ~~January 1, 1999, and as of that date is repealed, unless a~~  
17 ~~later enacted statute, which is enacted before January 1,~~  
18 ~~1999, deletes or extends that date. To facilitate~~  
19 *redevelopment planning, the agency may require the*  
20 *owner or operator of any site within a project area to*  
21 *provide the agency with all existing environmental*  
22 *information pertaining to the site, including the results of*  
23 *any Phase I or subsequent environmental assessment, as*  
24 *defined in Section 25200.14, any assessment conducted*  
25 *pursuant to an order from, or agreement with, any*  
26 *federal, state or local agency, and any other*  
27 *environmental assessment information, except that*  
28 *which is determined to be privileged. The person*  
29 *requested to furnish the information shall be required*  
30 *only to furnish that information as may be within their*  
31 *possession or control, including actual knowledge of*  
32 *information within the possession or control of any other*  
33 *party. If information equivalent to that required under*  
34 *Section 25200.14 is not available for the site, the agency*  
35 *may require the owner of the property to conduct an*  
36 *assessment pursuant to the standards set forth in Section*  
37 *25200.14.*

38 SEC. 6. Section 33459.2 of the Health and Safety Code  
39 is repealed.

1     ~~33459.2. (a) Within a project area, an agency may~~  
2 ~~take any actions which the agency determines are~~  
3 ~~necessary and which are consistent with other state and~~  
4 ~~federal laws to remedy or remove hazardous waste from~~  
5 ~~property if the agency obtains written approval from the~~  
6 ~~department or a California regional water quality control~~  
7 ~~board, as appropriate, prior to taking that action. In~~  
8 ~~addition, if methane or landfill gas is present, the agency~~  
9 ~~shall also obtain written approval from the California~~  
10 ~~Integrated Waste Management Board prior to taking that~~  
11 ~~action.~~

12     ~~(b) The terms “remove,” “remedy,” and “hazardous~~  
13 ~~waste,” as used in this section, have the same meaning~~  
14 ~~given those terms by Sections 25323, 25322, and 25117,~~  
15 ~~respectively.~~

16     ~~(c) An agency may designate a local agency in lieu of~~  
17 ~~the department or the California regional water quality~~  
18 ~~control board to oversee the remediation or removal of~~  
19 ~~hazardous substances from a specific hazardous substance~~  
20 ~~release site in accordance with all of the following~~  
21 ~~conditions:~~

22     ~~(1) The local agency may be designated in lieu of the~~  
23 ~~department or the California regional water quality~~  
24 ~~control board if the local agency is designated as the~~  
25 ~~administering agency under Section 25262. In such a case,~~  
26 ~~the local agency, as the administering agency, shall~~  
27 ~~conduct the oversight of the remedial action in~~  
28 ~~accordance with Chapter 6.65 (commencing with Section~~  
29 ~~25260) and all provisions of that chapter shall apply to the~~  
30 ~~remedial action.~~

31     ~~(2) The local agency may be designated in lieu of the~~  
32 ~~department or the California regional water quality~~  
33 ~~control board if the site is an underground storage tank~~  
34 ~~site subject to Chapter 6.7 (commencing with Section~~  
35 ~~25280) of Division 20, the local agency has been certified~~  
36 ~~as a certified unified program agency pursuant to Section~~  
37 ~~25404.1, the State Water Resources Control Board has~~  
38 ~~entered into an agreement with the local agency for~~  
39 ~~oversight of such sites pursuant to Section 25297.1, the~~  
40 ~~local agency determines that the site is within the~~

~~guidelines and protocols established in, and pursuant to, that agreement, and the local agency consents to the designation.~~

~~(3) A local agency may not consent to the designation by an agency unless the local agency determines that it has adequate staff resources and the requisite technical expertise and capabilities available to adequately supervise the remedial action.~~

~~(4) (A) Where a local agency has been designated pursuant to paragraph (2), the department or a California regional water quality control board may require that a local agency withdraw from the designation, after providing the agency with adequate notice, if both of the following conditions are met:~~

~~(i) The department or a California regional water quality control board determines that an agency's designation of a local agency was not consistent with paragraph (2), or makes one of the findings specified in subdivision (d) of Section 512.~~

~~(ii) The department or a California regional water quality control board determines that it has adequate staff resources and capabilities available to adequately supervise the remedial action, and assumes that responsibility.~~

~~(B) Nothing in this paragraph prevents a California regional water quality control board from taking any action pursuant to Division 7 (commencing with Section 13000) of the Water Code.~~

~~(5) Where a local agency has been designated pursuant to paragraph (2), the local agency may, after providing the agency with adequate notice, withdraw from its designation after making of the findings specified in subdivision (d) of Section 512.~~

~~(d) This section shall become operative on January 1, 1999.~~

*SEC. 7.* Section 33459.3 of the Health and Safety Code is amended to read:

33459.3. (a) Notwithstanding any other provision of law, ~~except as provided in Section 33459.7,~~ an agency that undertakes and completes an action, as specified in

1 subdivision (c), to remedy or remove a hazardous  
2 substance release on, under, or from property within a  
3 ~~redevelopment project, or approves an~~  
4 ~~owner participation agreement, requiring that action by~~  
5 ~~the owner participant in accordance with a cleanup or~~  
6 ~~redevelopment project, in accordance with a cleanup or~~  
7 remedial action plan prepared by a qualified  
8 independent contractor and approved by the  
9 department or a California regional water quality control  
10 board or the local agency, as appropriate, pursuant to  
11 subdivision (b), is not liable, with respect to that release  
12 only, under Division 7 (commencing with Section 13000)  
13 of the Water Code or Chapter 6.5 (commencing with  
14 Section 25100), Chapter 6.7 (commencing with Section  
15 25280), Chapter 6.75 (commencing with Section  
16 25299.10), or Chapter 6.8 (commencing with Section  
17 25300), of Division 20 of this code, or any other state or  
18 local law providing liability for remedial or removal  
19 actions for releases of hazardous substances. If the  
20 remedial action was also performed pursuant to Chapter  
21 6.65 (commencing with Section 25260) of Division 20, and  
22 a certificate of completion is issued pursuant to  
23 subdivision (b) of Section 25264, the immunity from  
24 agency action provided by the certificate of completion,  
25 as specified in subdivision (c) of Section 25264, shall apply  
26 to the agency, in addition to the immunity conferred by  
27 this section. In the case of a remedial action performed  
28 pursuant to Chapter 6.65 (commencing with Section  
29 25260) of Division 20, and for which the administering  
30 agency is a local agency, the limitations on the certificate  
31 of completion set forth in paragraphs (1) to (6), inclusive,  
32 of subdivision (c) of Section 25264 are limits on any  
33 immunity provided for by this section and subdivision (c)  
34 of Section 25264.

35 (b) Upon approval of any cleanup or remedial action  
36 plan, pursuant to applicable statutes and regulations, the  
37 director or the California regional water quality control  
38 board or the local agency, as appropriate, shall  
39 acknowledge, in writing *within 60 days*, that upon proper  
40 completion of the remedial or removal action in

1 accordance with the plan, the immunity provided by this  
2 section shall apply to the agency.

3 (c) Notwithstanding any provision of law or policy  
4 providing for certification by a person conducting a  
5 remedial or removal action that the action has been  
6 properly completed, a determination that a remedial or  
7 removal action has been properly completed pursuant to  
8 this section shall be made only upon the affirmative  
9 approval of the director or the California regional water  
10 quality control board or the local agency, as appropriate.

11 (d) The approval of a cleanup or remedial action plan  
12 under this section by a local agency shall also be subject  
13 to the concurrent approval of the department or a  
14 California regional water quality control board when the  
15 agency receiving the approval was formed by the same  
16 entity of which the local agency is a part.

17 (e) Upon proper completion of a remedial or removal  
18 action, as specified in subdivision (c), the immunity from  
19 agency action provided by the certificate of completion  
20 provided pursuant to subdivision (c) of Section 25264 and  
21 the immunity provided by this section extends to all of the  
22 following, but only for the release or releases specifically  
23 identified in the approved cleanup or remedial action  
24 plan and not for any subsequent release or any release not  
25 specifically identified in the approved cleanup or  
26 remedial action plan:

27 (1) Any employee or agent of the agency, including an  
28 instrumentality of the agency authorized to exercise  
29 some, or all, of the powers of an agency within, or for the  
30 benefit of, a redevelopment project and any employee or  
31 agent of the instrumentality.

32 (2) Any person who enters into an agreement with an  
33 agency for the redevelopment of property, if the  
34 agreement requires the person to acquire property  
35 affected by a hazardous substance release or to remove or  
36 remedy a hazardous substance release with respect to  
37 that property.

38 (3) Any person who acquires the property after a  
39 person has entered into an agreement with an agency for



1 redevelopment of the property as described in paragraph  
2 (2).

3 (4) Any person who provided financing to a person  
4 specified in paragraph (2) or (3).

5 (f) Notwithstanding any other provision of law, the  
6 immunity provided by this section does not extend to any  
7 of the following:

8 (1) Any person who was a responsible party for the  
9 release before entering into an agreement, acquiring  
10 property, or providing financing, as specified in  
11 subdivision (e).

12 (2) Any person specified in subdivision (a) or (e) for  
13 any subsequent release of a hazardous substance or any  
14 release of a hazardous substance not specifically  
15 identified in the approved cleanup or remedial action  
16 plan.

17 (3) Any contractor who prepares the cleanup or  
18 remedial action plan, or conducts the removal or  
19 remedial action.

20 (4) Any person who obtains an approval, as specified  
21 in subdivision (b), or a determination, as specified in  
22 subdivision (c), by fraud, negligent or intentional  
23 nondisclosure, or misrepresentation, and any person who  
24 knows before the approval or determination is obtained  
25 or before the person enters into an agreement, acquires  
26 the property or provides financing, as specified in  
27 subdivision (e), that the approval or determination was  
28 obtained by these means.

29 (g) The immunity provided by this section is in  
30 addition to any other immunity of an agency provided by  
31 law.

32 (h) This section does not impair any cause of action by  
33 an agency or any other party against the person, firm, or  
34 entity responsible for the hazardous substance release  
35 which is the subject of the removal or remedial action  
36 taken by the agency or other person immune from  
37 liability pursuant to this section.

38 (i) This section does not apply to, or limit, alter, or  
39 restrict, any action for personal injury, property damage,  
40 or wrongful death.

(j) This section does not limit liability of a person described in paragraph (3) or (4) of subdivision (e) for damages under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(k) The agency shall reimburse the department, the California regional water quality control board, and the local agency for costs incurred in reviewing or approving cleanup or remedial action plans pursuant to this section.

~~SEC. 3. Section 33459.7 of the Health and Safety Code is amended to read:~~

~~33459.7. Sections 33459.3 and 33459.4 apply only to remedial or removal actions required of an owner-participant or commenced by an agency before January 1, 1999. For purposes of this section, an agency that adopts a resolution to undertake a removal or remedial action shall be deemed to have commenced the removal or remedial action on the date the resolution is adopted.~~

*SEC. 8. Section 33459.4 of the Health and Safety Code is amended to read:*

*33459.4. (a) Except as provided in Section 33459.7, if If a redevelopment agency undertakes action to remedy or remove, or to require others to remedy or remove, including, compelling a responsible party through a civil action, to remedy or remove, a release of hazardous substance, any responsible party or parties shall be liable to the redevelopment agency for the costs incurred in the action. An agency may not recover the costs of goods and services that were not procured in accordance with applicable procurement procedures. The amount of the costs shall include the interest on the costs accrued from the date of expenditure and reasonable attorney's fees and shall be recoverable in a civil action. Interest shall be calculated based on the average annual rate of return on an agency's investment of surplus funds for the fiscal year in which costs were incurred.*

*(b) The only defenses available to a responsible party shall be the defenses specified in subdivision (b) of Section 25323.5.*

(c) The scope and standard of liability for any costs recoverable pursuant to this section shall be the scope and standard of liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.); provided, however, that any reference to hazardous substance therein shall be deemed to refer to hazardous substance as defined in subdivision (b) of Section 33459.

(d) An action for recovery of costs of a remedy or removal undertaken by a redevelopment agency under this section shall be commenced within three years after completion of the remedy or removal.

(e) The action to recover costs provided by this section is in addition to, and is not to be construed as restricting, any other cause of action available to a redevelopment agency.

*SEC. 9. Section 33459.7 of the Health and Safety Code is repealed.*

~~33459.7. Sections 33459.3 and 33459.4 apply only to remedial or removal actions commenced by an agency before January 1, 1999. For purposes of this section, an agency that adopts a resolution to undertake a removal or remedial action shall be deemed to have commenced the removal or remedial action on the date the resolution is adopted.~~

*SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.*

*Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.*